



December 20, 1999

Mr. Juan J. Cruz
Escamilla & Poneck, Incorporated
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-3681

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130437.¹

The Harlandale Independent School District (the “district”), which you represent, received a request for records pertaining to a former district employee. You state that the district has released some of the requested records. You contend, however, that some of the requested information is protected under various exceptions to required public disclosure.

We note at the outset, however, that although you also state that the district “has withheld [from the requestor] documents protected by the attorney-client privilege,” you have not submitted any such documents to this office for review. Section 552.301(e)(1)(D) of the Government Code requires governmental bodies to submit to this office copies of requested documents that they seek to withhold from the public. When a governmental body fails to do so, the information is presumed to be public and must be released “unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302. You have not presented this office with compelling reasons for withholding information pursuant to the attorney-client privilege. *See* Open Records Decision No. 630 (1994). We therefore deem the privilege as waived with regard to all records coming within the ambit of the current request. Consequently, the district must release all such records to the requestor.

¹Because of an administrative error, your request was also assigned ID# 130513.

We will now address in turn each of your contentions regarding the documents you submitted to this office. You first contend that the document you submitted as Exhibit "B," the employee's college transcript, is excepted from public disclosure pursuant to section 552.102(b) of the Government Code, which protects from public disclosure

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, *except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.* [Emphasis added.]

In Open Records Decision No. 526 at 2-3 (1989), this office held that

governmental bodies must edit from professional public school employees' [college] transcripts information other than the employee's name, the degree obtained, and the courses taken. For example, grades must be deleted as well as any extraneous information, such as religious preference, appearing on the transcripts.

Open Records Decision No. 526 governs your request. We have marked the information in the college transcript that the district must withhold pursuant to section 552.102(b). The remaining information in the transcript must be released.

You next contend that the information contained in the documents you submitted as Exhibit "C" must be withheld pursuant to sections 552.117 and 552.130 of the Government Code. Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024 of the Government Code. You have not submitted evidence that the referenced employee elected to have the district withhold her personal information in accordance with section 552.024. The district must withhold such information contained in Exhibit "C" and other documents submitted to this office only if the employee had elected to protect these types of information prior to the district's receipt of the current records request.² See Open Records Decision No. 530 at 5 (1989)

²We additionally note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* See Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and therefore is confidential under

(applicability of section 552.117 to particular piece of information must be determined at time request for it is made).

Section 552.130(a)(1) of the Government Code requires that the district withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Because this type of information is made confidential under section 552.130(a) of the Government Code, we agree that the district must withhold the copy of the employee's driver's license pursuant to section 552.130(a)(1).

You seek to withhold the records you submitted as Exhibit "D" pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 requires the district to withhold, *inter alia*, information made confidential by statute. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). Because the documents under Exhibit "D" "evaluate" the former employee's performance as a teacher, the district must withhold those evaluations pursuant to section 21.355 of the Education Code.

You contend that the documents contained in Exhibits "E" and "F" are protected from public disclosure by common-law privacy. Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101 of the Government Code: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Most of the information at issue pertains solely to the employee's qualifications and actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). One document contained in Exhibit "E," however, reveals the former employee's designation of

section 405(c)(2)(C)(vii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the district should ensure that this number was not obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

beneficiaries of the employee's retirement benefits. This information reflects a personal financial decision that is protected by common-law privacy. *See* Open Records Decision No. 600 at 11 (1992). None of the remaining information contained in Exhibits "E" or "F" is protected from public disclosure on privacy grounds.

Finally, you contend that Exhibit "F" is excepted from public disclosure pursuant to section 552.103 of the Government Code because those documents "chronicle and memorialize" a settlement agreement reached between the former employee and the district. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation "to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." Open Records Decision No. 588 at 1 (1991). Please note that the Seventy-sixth Legislature amended section 552.103 by deleting its former reference to "settlement negotiations." *See* Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 6, 1999 Tex. Gen. Laws 4500, 4502. Because the litigation referenced in Exhibit "F" was non-suited, we conclude that none of the information contained in Exhibit "F" may be withheld pursuant to section 552.103. *See* Open Records Decision No. 350 (1982) (applicability of section 552.103 ends once litigation has concluded).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should

report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/nc

Ref: ID# 130437
ID# 130513

Encl. Submitted documents

cc: Ms. Gina M. Elliott
Employee Relations Officer
Northside Independent School District
Human Resources Department
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San Antonio, Texas 78238-1699
(w/o enclosures)